



**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2038, Applicant v  
STUART OLSON INDUSTRIAL CONTRACTORS INC., STUART OLSON INC., STUART  
OLSON INDUSTRIAL INC., ARC LINE CONSTRUCTION Ltd., TARTAN CANADA  
CORPORATION, AND STUDON INDUSTRIAL INC., Respondents**

LRB File No. 210-19; June 2, 2021

Vice-Chairperson, Barbara Mysko; Board Members: Mike Wainwright and Phil Polsom

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Electrical Workers, Local 2038:

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Steve Seiferling

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Stuart Olson Industrial Inc., Arc Line Construction  
Ltd., Tartan Canada Corporation, and Studon Industrial  
Inc.:

Thomas W.R. Ross

**Common Employer Application – Section 6-79 of *The Saskatchewan Employment Act* – Parent company and unionized subsidiary – Businesses and activities are related – Some indicia of common control and direction but general contractor not named as respondent – Not appropriate to draw adverse inference for failure to call evidence – Board’s discretion is exercised after three prerequisites are satisfied – No compelling labour relations purpose on the evidence – Application is dismissed.**

**REASONS FOR DECISION**

**[1] Barbara Mysko, Vice-Chairperson:** These are the Board’s Reasons for Decision in relation to a common employer application brought pursuant to subsection 6-79(1) of *The Saskatchewan Employment Act* [Act] by International Brotherhood of Electrical Workers, Local 2038 [Union], in relation to the certified entity, Stuart Olson Industrial Constructors Inc. [SOIC], and the non-union entities, Stuart Olson Inc., Stuart Olson Industrial Inc., Arc Line Construction Ltd., Tartan Canada Corporation, and Studon Industrial Inc. [Non-Union Respondents].

**[2]** The Union is the exclusive bargaining agent for a standard unit of electricians and electrical workers employed by Stuart Olson Industrial Constructors Inc. in the Province of Saskatchewan south of the 51<sup>st</sup> parallel, pursuant to an Order of this Board, dated March 13, 2015, in LRB File No. 039-15. In September, 2019, that order was amended to reflect the employer’s proper name, Stuart Olson Industrial Constructors Inc.

**[3]** Stuart Olson Inc. [SOI] is the holding company for the named Respondent subsidiaries. According to its Annual Information Form [AIF], SOI is a publicly traded construction and industrial services company that provides general contracting and electrical building systems contracting in the institutional and commercial construction markets as well as general contracting, electrical, mechanical and specialty trades in the industrial construction and services market.

**[4]** SOIC is multi-trade general contractor that provides industrial electrical, instrumentation, power line, millwrighting, structural steel, equipment installation, civil construction and maintenance services to clients in the resource and industrial sectors. Its primary industries are mining and power generation. SOIC operates mainly in Ontario, Manitoba and the Northwest Territories.

**[5]** SOIC is one of the subsidiaries forming the industrial group of companies. It falls under the general contracting and construction division of the industrial group. According to the AIF, the companies within the industrial group are similar in terms of the services they provide, production processes, customers, methods of service delivery and the applicable regulatory environment. SOIC is headquartered in Sudbury, Ontario.

**[6]** This application was set down for a hearing scheduled for December 15 and 16, 2020, and continued on January 15, 2021. At the outset of the hearing, the Union raised a preliminary objection to a panel member assigned to this matter, Phil Polsom, and sought that the member recuse himself from the panel.

**[7]** The objection revolved around Member Polsom's association with CLAC, and his past involvement as a witness and instructing client with other matters before the Board. According to the Union, its previous arguments with respect to CLAC's organization within the construction sector have been met with allegations of interference with CLAC's operations. Second, a CLAC local in Alberta is a certified bargaining agent for construction carpenters and labourers employed by Stuart Olson Services Ltd. in Edmonton and for Tartan Industrial Services Ltd. Both of these companies are affiliated with the Respondents to these proceedings. Even if one or both of these entities does not hire electrical workers, the Union's concern is that CLAC's practice is to apply for certification orders for all-employee bargaining units.

**[8]** In summary, the Union's objection amounted to a general concern about a conflict between CLAC and the Building Trades and a specific concern about a conflict of interest with affiliated entities.

**[9]** None of the Respondents objected to Member Polsom's participation. Counsel for the Non-Union Respondents observed that the labour relations community is small, and that the implication of the objection, being that a representative of CLAC cannot sit on a panel involving any Building Trades union, is extremely broad. The uniqueness of the construction industry means that it is helpful for persons with personal experience within the industry to sit on construction industry panels. Most importantly, there is no reasonable apprehension of bias. There is no ongoing dispute. The certificates raised by the Union relate to a different CLAC local and to entities that are not parties to the proceedings.

**[10]** The Board adjourned the hearing to consider the objection, and then delivered its decision orally. The Board was not persuaded that there was a reasonable apprehension of bias, and therefore, declined to disqualify Member Polsom from sitting on the panel. The following are the Board's brief reasons for this decision.

**[11]** First, the test to be applied on an application for recusal considers what an informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude: *Lalonde v United Brotherhood of Carpenters and Joiners of America, Local 1985*, 2003 CanLII 62882 (SK LRB) [*Lalonde*]; *Jans Estate v Jans*, 2020 SKCA 61 (CanLII). Is it more likely than not that the decision-maker, whether consciously or unconsciously, would not decide the matter fairly? In *Lalonde*, the Board adopted the practice of having the issue determined by the entire panel, as the Board has done here.

**[12]** Whether there is a reasonable apprehension of bias is a question of fact, and it is necessary to examine the circumstances in context. The test is an objective one and the threshold for finding real or perceived bias is high. Mere suspicion, surmise or conjecture is not enough. While outright animosity between a decision-maker and a party to a proceeding may raise a reasonable apprehension of bias, it will not necessarily do so.

**[13]** In our view, the Union's allegations did not raise an apprehension of bias from the perspective of a reasonably well-informed, right-minded person viewing the matter realistically and practically, with an understanding of the complexity of the issues and the context. First, CLAC has certification orders in Alberta for two affiliated entities. Neither of those entities are parties to

the current matter. Although the Union's application, by its nature puts in issue the related or associated nature of various entities, it has not included these affiliates in its application and there is no indication that these affiliates, and the Alberta local, have a nexus with the factual circumstances as outlined in the application.

**[14]** Second, before entering the duties of office, every board member shall take the prescribed oath or affirmation, pursuant to section 6-93 of the Act. Members are subject to a conflict of interest policy which recognizes the members' inherent representative capacity, and the expectation that members will bring their labour relations expertise and knowledge to Board proceedings. Members of the Board have a responsibility to conduct themselves in a manner that does not compromise the Board's mandate or undermine the public's confidence in the members' ability to discharge their responsibilities properly.

**[15]** Finally, the Board carefully considered the issues that counsel raised in relation to the Member's association with CLAC and the prior proceeding, and was not persuaded that these concerns involved factual matters which were sufficiently current or specific to the issues in the current case. Nor did the conflict which was described raise concerns about a reasonable apprehension of bias in respect of the Member's deliberations in this case.

**Evidence:**

**[16]** The following is a summary of the evidence. The Union called three witnesses: Jeff Sweet [Sweet], Stephen Kobak [Kobak], and Matthew Sandham [Sandham]. In addition to calling these witnesses, the Union filed a large number of documents in evidence, many of which were provided in response to the Union's request for the production of documents. In relation to these requests, the Union also filed applications related to the production of documents with the Board, as against the respective Respondents (LRB File Nos. 134-20 & 135-20). The Union raised no issues during the hearing with respect to the Respondents' responsiveness to the requests or the applications. The Respondents called no witnesses.

**[17]** Stuart Olson Inc. [SOI] has been registered as a holding company for more than 30 years, and is not registered to do business in Saskatchewan.

**[18]** Stuart Olson Industrial Inc. [SOII] is a subsidiary of Stuart Olson Inc. and is the parent corporation of other entities, including the balance of the Respondents. SOII has been struck from the corporate registry in Saskatchewan due to inactivity. The request for strike off was made in July 2017.

**[19]** Tartan Canada Corporation [Tartan] was founded in 1953, is headquartered in Alberta, and was acquired by SOII in or around 2018. Tartan was previously a privately held mechanical maintenance, repairs and operations company based in Calgary.

**[20]** Arc Line Construction Ltd. [Arc Line] was incorporated in 2002, is a subsidiary of Tartan, and thus joined the Stuart Olson group of companies when Tartan was acquired in 2018. Arc Line was incorporated in 1994. Arc Line's work focuses on pipeline services. Arc Line has been working in Saskatchewan for a number of years.

**[21]** Studon Industrial Inc. [Studon] began its operations in 1995 and was registered in Saskatchewan in 2003. Studon was acquired by SOII on January 6, 2015. It is an electrical and instrumentation services provider operating in B.C., Alberta, and Saskatchewan, with headquarters in Red Deer, Alberta. Studon advertises as an electrical and instrumentation contractor providing services to the oil sands, SAGD, petrochemical and refinery sectors.

**[22]** Studon is licensed in Saskatchewan as an electrical contractor. It performed work in Saskatchewan prior to the SOIC certification, worked on two projects in Saskatchewan in 2015, and then performed the electrical work on the project in issue in this application.

**[23]** Since 2016, SOIC has not secured any work in Saskatchewan, nor approached the Union for that purpose. It did not bid on work in Saskatchewan between 2016 and the first quarter of 2019.

**[24]** According to the replies to the production requests, neither SOI, SOII, nor Tartan have performed any work in excess of \$25,000 in Saskatchewan, have had any offices, buildings, or premises in Saskatchewan, or bid on any work in Saskatchewan since 2015.

**[25]** The Respondents also relied on the contents of their replies filed in this matter. According to the replies:

- a. SOI never employs trades personnel. SOI is the shareholder of Stuart Olson Buildings Ltd., SOII, and The Churchill Corporation. These entities are shareholders of other entities. These various entities function independently in respect of their day-to-day activities.

- b. SOII does not execute project contracts and does not employ trade labour. SOII asserts that the various entities function independently in respect of their day-to-day activities, especially those entities that have unionized relationships.
- c. Both SOI and SOII state that the different entities are managed separately, employ their own employees, are responsible for their own supplies, materials, assets, and equipment. Their day-to-day activities are separate.
- d. Tartan has operated primarily in Alberta but has been largely inactive since the acquisition by SOII, and never employs trades personnel.
- e. Arc Line has its own management and employees, enters its own contracts and performs its own work, did not hire and does not employ electricians for the project in issue.

**[26]** On June 6, 2019, Western Potash Corp. announced that it had entered into an agreement with Prairie Construction Inc. [Prairie Construction], another subsidiary of SOI., to act as the General Contractor for its Milestone Phase 1 Potash Project [Western Potash project]. Prairie Construction is not a respondent to this application. SOI's general contractor scope is described as including "the construction of all above ground facilities, including concrete, steel and pipework, installation of equipment, electrical and control system work, building work and site finishing. Stuart Olson will mobilize to the project site in June 2019, with an anticipated maximum workforce of around 100 people on site." The Western Potash project included industrial electrical work within IBEW's jurisdiction, and members of Local 2038 were employed to perform that work.

**[27]** Sweet is the President of the Union (the local) and a member, the Assistant Business Manager, and a journeyman electrician. In 2015, he became a Union organizer, and was in that position when the Union organized SOIC on a job in Regina on a substation. The Union was contacted directly by SOIC about manpower for the Regina job. The Union filed an application for certification. Later in 2015, there was another substation job in Herbert, Saskatchewan, to which the Union sent several other members. There has been no work from SOIC since.

**[28]** The Western Potash project was on the radar of the affiliates for a while. At some point, it was announced at a Building Trades Council meeting that Stuart Olson had won the job. The Union expected a call, did not get one, but then reached out and did not get an answer. At least two affiliates had been in contact with Stuart Olson. When the Union was told that there was no information about the electrical work, Sweet began looking into it further.

**[29]** Job postings were put in evidence for electricians through Arc Line and Studon. The postings arose from searches, mainly performed by Sweet, in 2019 (and some performed by the Alberta local prior to that). Two jobs were for electricians in Regina and area. Sweet had heard that Arc Line would be involved in the electrical work on the Western Potash project and so he assumes that the Arc Line job posting was for that project. At the time, the only industrial project that he knew anything about was the Western Potash project.

**[30]** Also filed in evidence was a posting for a site administrator in Esterhazy for SOI. It is noted that the position is located in Esterhazy “on a client site”. There is also a posting in Regina for SOI for a Mechanical Project Manager/Estimator with extensive responsibilities for pre-construction, construction, and post-construction management, and a posting for a journeyman crane operator for “Stuart Olson” in Regina. There are also two job postings for an apprentice industrial electrician for a job in Regina and area working for Studon. Both postings reference Stuart Olson extensively and, in one of those postings, the “apply now” link connects to the Stuart Olson website.

**[31]** According to the constitution, Union members are expected to organize non-union worksites. Sweet suggested that the Union had hoped to organize the employees of Studon on the Western Potash job. Kobak’s employment with Studon was terminated before the Union was able to reach the threshold for support. There was no unfair labour practice application filed. The Union was concurrently pursuing the common employer designation.

**[32]** In SOIC’s replies to the request for particulars, it states that it made a number of losing bids on projects in Saskatchewan in 2019. Sweet described the reasons why a contractor might choose to contact the Union in relation to bids it is making. He could not recall having heard from SOIC in relation to those bids.

**[33]** Kobak is a journeyman electrician and a member of the Union. He worked for a Stuart Olson affiliate in or around 2016, 2018, and 2019. In or around 2016, he was dispatched through the Union hall. He was working on three different stations along the pipeline from Regina to Hebert. He was laid off from this job.

**[34]** In 2018, one of his friends was working for Stuart Olson and helped him obtain a non-union job out of province, with Studon. His friend was a shift superintendent. The work consisted of maintenance work on a refinery approximately 100 km north of Fort McMurray. He volunteered for a layoff.

**[35]** In 2019, Kobak found a job on the Western Potash project, again, through an interpersonal contact. When he found out about the job, he spoke with a representative of Stuart Olson, called “John”. He informed John that he had worked for Stuart Olson in the past and that Stuart Olson was a union contractor in Saskatchewan. John did not respond to this, but did tell him that there was a job coming up in Milestone and that Kobak would be contacted when it started.

**[36]** As promised, Kobak was contacted about the job. A message was left. Kobak called John, who told Kobak that he would be hired in the next round. Kobak advised the Union that he was going to be hired for the upcoming job. He was told to stay in touch with the Union organizer. A few weeks later, HR gave Kobak a start date. He understood that he would be working for a non-union company.

**[37]** Kobak was to report for site orientation on August 6, 2019 to Ayaz Kassam [Kassam]. Kassam was the project manager. It is unclear whether Kassam was actually involved in site orientation. Anyway, Kobak had very little interaction with Kassam on the project, but believed that Kassam worked for Stuart Olson. The Union entered a LinkedIn profile for Kassam which lists his employment with Stuart Olson and his apparent residence as Sudbury, Ontario.

**[38]** Kobak’s dispatch sheet is branded with the Stuart Olson header. His pre-dispatch appointment information references Prairie Construction. The contact at human resources was Annette Kooistra [Kooistra], who works for SOI. Kobak’s paystub lists Studon (at an Edmonton address) as the employer for the payroll account on the 2019 job.

**[39]** Kobak worked on a crew of four electricians, including a foreman “Ben”, and three journeymen including Mitch Adams [Adams] and an electrician from Moose Jaw. The crew performed the lighting work in a temporary warehouse. Two or three weeks into the job, a local journeyman electrician joined the crew.

**[40]** Adams and Kobak were members of the Union, and were known to be members.

**[41]** A superintendent, “Keaton”, came on the job a few weeks after Kobak was hired. Kobak spoke with Keaton briefly about Union members that they might share as acquaintances. Kobak spoke about union matters with Adams on several occasions and with Dave Dell [Dell], a former member of the Union who was the Western Potash representative overseeing quality control on the project. Kobak had spoken to Adams about organizing and had briefly spoken to Dell about



certifying the company. He did not recall much detail. He described the conversation with Dell as “quick”.

**[42]** He did not speak with anyone else about unionization but he did speak with the other electricians about previous union jobs he had done.

**[43]** Kobak explained that his employment at the Western Potash site ended in layoff. It occurred at the end of the day on a Friday. He was told to see the superintendent. According to Kobak, he was told that they had not accomplished as much as they were supposed to and that he was being laid off. As far as he was aware, no one else was terminated that day, and the foreman was not disciplined. No concerns had been raised with him before that day. There were a few delays due to materials and rain but none of this was within his control. One of the other workers had already been written up twice.

**[44]** In the same week, one of the labourer’s kids had begun to work on site. That was his first week as an electrician.

**[45]** Sandham is an electrician and a member of the Union. He testified at this hearing from his current work site in Manitoba. He worked on the Western Potash project, starting around November until March. He responded to a job posting.

**[46]** There were Arc Line signs up at the job site, Studon issued the pay checks, and there were trucks on site with the Stuart Olson logo. He really could not say who was employing him. His job ended when the money ran out and the project ended. Everyone was laid off at that time.

**[47]** Recently while working in Manitoba, Sandham had heard that Keaton was working in the same general location, and so he texted him to see what he was up to. Apparently, Keaton was working seven days a week. Sandham assumed that he was working for Stuart Olson, that is, the unionized company. The next he heard, Keaton was back working for the Western Potash project.

**[48]** Sandham worked for SOIC in Winnipeg once on a project. He was dispatched by the Union. He has not worked for SOIC in Saskatchewan.

**[49]** There is no evidence that Tartan was involved in the Western Potash project.

**Arguments:**

Union:

**[50]** In addition to being the corporate parent of all other Respondents, SOI is responsible for providing numerous management services to the balance of the Respondents, including labour relations services. In turn, SOII is responsible for business development for the principal operating subsidiaries within an integrated industrial services group. The day-to-day operations include the transfer of personnel between entities, and the conduct of labour and employment relations across entity lines.

**[51]** The Union says that the primary labour relations purpose of the requested declaration is to allow the Union to meaningfully exercise its collective bargaining rights, under circumstances where the Respondents and related entities have elected to direct work within its jurisdiction to non-union affiliates without explanation. The requested declaration would give effect to a general prohibition against “double-breasting”; ensure that the certification order covers the entities with real economic control; and respond to circumstances in which an effort to organize was frustrated by the employer.

SOIC:

**[52]** The Union appears to have included SOIC in these proceedings only because it needs a certified entity to make this application. It believes that because it has a certification for SOIC other companies within the Stuart Olson group of companies should be subject to the same certification order even in the absence of any evidence that SOIC was involved in the Western Potash project. That is the project that the Union relies upon and therefore that is the project that should receive the Board’s attention. SOIC performed work in 2015 and 2016 pursuant to the certification order. It bid on work in 2019 and 2020. Those bids were not successful. SOIC continues to bid work in Saskatchewan.

**[53]** The work in question was awarded to Prairie Construction. This company is not a party. Studon, one of the other Respondents, performed electrical work on the project. There is no evidence that any of the other Respondents performed work on the Western Potash project.

**[54]** There is no evidence of common control and direction. The control and direction of SOIC rests with SOIC and no other entity. The Union seems to suggest that SOIC employs Kassam based on his LinkedIn profile. The fact that he lists Stuart Olson as his employer is a non-issue. The evidence is that Kassam was not employed by the other Respondents and was working on

the Western Potash project. The project was awarded to Prairie Construction. The logical extension of the evidence is that he was working for Prairie Construction.

**[55]** Finally, there is no labour relations purpose served by making the declaration requested by the Union. There has been no erosion of bargaining rights. Instead, the Union is seeking to expand its certification to include non-unionized entities, including some that do not even perform electrical work.

**Non-Union Respondents:**

**[56]** This application is an affront to the labour relations purpose that underlies the appropriate considerations in a common employer case. The purpose of a common employer declaration is to protect bargaining rights. It should not be relied upon to expand those rights. The Union seeks to extend bargaining rights that it acquired based on a one-person bargaining unit to usurp the longstanding non-union status of the remaining Respondents. The Union only brought this application after it became clear that it was unable to organize the employees of Studon. A common employer application is not a substitute for an organizing drive.

**[57]** To grant a common employer declaration the alleged erosion of bargaining rights must be real or imminent, not speculative. A common employer declaration is a powerful and extraordinary tool that pierces the corporate veil. For that reason, it requires that the applicant prove all of the elements, and even then, to present a compelling reason for the declaration to be made. Unions do not choose workers; workers choose unions.

**[58]** Part VI, Division 13, Subdivision 8 of the Act is entitled "Spin-off Corporations". A spin-off corporation is formed when a unionized employer "spins off" a new non-union corporation for the purpose of evading bargaining rights. The purpose of the common employer provisions is to prevent employers from doing this. There is no spin-off here. To the contrary, SOIC specifically sought out the Union to establish a unionized relationship independent of other operating entities. SOIC continues to bid on and perform work.

**[59]** Lastly, neither SOI nor SOII employ tradespeople and therefore cannot be found to fall within the definition of "employer" contained in the Act.

**Applicable Statutory Provisions:**

**[60]** The following statutory provisions are applicable:

**6-1(1)** *In this Part:*

...

(i) **“employer”** means:

- (i) *an employer who customarily or actually employs three or more employees;*
- (ii) *an employer who employs fewer than three employees if at least one of the employees is a member of a union that includes among its membership employees of more than one employer; or*
- (iii) *with respect to any employees of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the contractor or principal as the board may determine for the purposes of this Part;*

**6-4(1)** *Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*

(2) *No employee shall unreasonably be denied membership in a union.*

...

**6-79(1)** *On the application of an employer or a union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized employer for the purposes of this Part if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.*

(2) *In exercising its authority pursuant to subsection (1), the board may recognize the practice of non-unionized employers performing work through unionized subsidiaries.*

(3) *The effect of a declaration pursuant to subsection (1) is that the corporations, partnerships, individuals and associations, on and after the date of the declaration:*

- (a) *constitute a unionized employer in the appropriate trade division;*
- (b) *are bound by a designation of a representative employers’ organization; and*
- (c) *are bound by the collective agreement in effect in the trade division.*

(4) *The board may make an order granting any additional relief that it considers appropriate if:*

- (a) *the board makes a declaration pursuant to subsection (1); and*
- (b) *in the opinion of the board, the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for the purpose of avoiding:*
  - (i) *the effect of a determination of a representative employers’ organization with respect to a trade division; or*
  - (ii) *a collective agreement that is in effect or that may come into effect between the representative employers’ organization and a union.*

(5) *For the purposes of subsection (4), the burden of proof that the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for a purpose other than a purpose set out in subclause (4)(b)(i) or (ii) is on the corporation, partnership, individual or association.*

(6) *An order pursuant to subsection (4) may be made effective from a day that is not earlier than the date of the application to the board pursuant to subsection (1).*

**Analysis:**

**[61]** The Union bears the onus to prove that it is more likely than not that the Respondents' businesses, undertakings or other activities are associated or related and are carried on under common control or direction by or through the corporations.

**[62]** The governing provision is section 6-79 of the Act. The Board notes that a related provision, section 6-20, also allows for a common employer declaration outside of the construction industry division. There are a few differences between the two provisions, none of which were raised by the parties.<sup>1</sup> It is sufficient, for the purposes of the current case, to observe that the case law considering section 6-20 has been adopted and applied in the construction industry context.

**[63]** In describing the purpose of section 6-79, the Union relies on *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 870 v North American Construction Group*, 2013 CanLII 60719 (SK LRB) [*North American*], at paragraph 60. There, the Board explained that there are legitimate business reasons for corporations to operate in an associated or related fashion, but there are other reasons which are not permitted:

*[60] In response to the complex and often murky realities of corporate organization, most Canadian jurisdiction have enacted legislation that authorizes labour boards to pierce the corporate veil and find that two (2) or more related businesses ought to be treated as one (1) common employer for the purposes of labour relations. Saskatchewan has such a provision for the construction industry in s. 18 of The Construction Industry Labour Relations Act, 1992. Many corporations operate in an associated or related fashion and these corporations may be operated under common direction and control for a variety of legitimate business reasons. However, if the purpose or effect of a corporate organization or reorganization is to avoid collective bargaining obligations (for example, by permitting the transfer of work that would normally be completed by a unionized company to a non-union a related company operated under common direction and control – a practice commonly known as “double breasting”), then this Board has authority pursuant to s. 18 to pierce the corporate veil, so to speak, and declare both employers to be one (1) for the purposes of collective bargaining. The affect of a common employer designation is to cause the employees of both the union and non-union employers to fall within the scope of a trade union’s bargaining unit. Obviously, it is a powerful tool granted by the legislature for the purpose of achieving a particular remedial effect.*

**[64]** The Union argues that section 6-79 is intended to protect bargaining rights against a practice which is commonly referred to as “double-breasting”, and that the most recent, pertinent

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<sup>1</sup> First, section 6-20 is subject to a temporal limitation that is not applicable to section 6-79. Second, section 6-20 includes the phrase “one employer” instead of “one unionized employer”. Third, section 6-20 references common control or direction being carried on by “one person through the different corporations”, etc., rather than “by or through those corporations”, etc.

legislative amendment was intended to generally prohibit double-breasting in circumstances in which it was previously permitted.

**[65]** In support of this argument, the Union relies on the Hansard transcripts of the legislative debates about *The Construction Industry Labour Relations Amendment Act, 2000*. In the second reading speech on May 24, 2000, then Minister Crofford explained:

*This is the double breasting that we have heard about. Now it doesn't mean that companies cannot operate as non-union companies, and it doesn't mean that companies cannot operate as union companies. It merely means that you cannot do both at the same time. And this is the essential point to understand.*

...

*In the '80s, unionized contractors wanted to lower their costs and began the practice of double breasting or forming non-union spinoff companies. This allowed them in effect to shelve their existing union certification orders.*

*Now although those certification orders remain, collective bargaining effectively disappeared. This practice accelerated in 1983 with the repeal of the legislation which was introduced in 1979 to govern labour relations in the construction industry.*

*The practice of double breasting has led to a situation in which companies with spinoffs, operating as both union and non-union at the same time, have the best of all worlds. Such companies are able to, in essence, bid against themselves on construction contracts and can flip from union to non-union depending on the project.*

*The practice of double breasting as stated in the 1985 Board of Conciliation Report is also fundamentally at odds with the principle of trade unionism as set out in The Trade Union Act, and I'll quote directly from that Board of Conciliation Report:*

*To allow a continuation of double breasting in the industry as presently exists, seriously jeopardizes the continued existence of the unionized construction industry.*

...

*In 1992, the government, acting on recommendations submitted by the Construction Industry Advisory Committee, passed The Construction Industry Labour Relations Act, 1992, or the CILRA. That legislation which we are amending today set the rules for the unionized construction industry with the exception of companies spun off prior to 1992.*

*Now while there was no new spinoff companies created after that time, the numerous spinoffs created prior to the package remained in operation. The Construction Industry Labour Relations Act and the CCTA were the government's responses to the issues I have just mentioned.*

*Now neither was perfect and neither has worked the way that everyone hoped they would. So what we have today is a number of companies which established their spinoffs prior to 1992, which are continuing to operate as union and non-union.*

*And this is what the legislation will prohibit. It will level the playing field and encourage the industry fairness in the province over the long term. And I want to point out that Saskatchewan is the only jurisdiction in Canada with construction legislation permitting double breasting. Prohibiting this practice will put Saskatchewan on the same footing as other jurisdictions.*

...  
*The building trade unions covered by the certification orders that are still in place will need to apply to the Labour Relations Board on a company-by-company basis to request a ruling on whether the unionized parent company and the non-union spinoff are related.*  
 ...

**[66]** The Board is to interpret section 6-79 in accordance with the modern principle of statutory interpretation, which has been incorporated into *The Legislation Act*:

*2-10(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.*

**[67]** It is well-established that Hansard transcripts are admissible as extrinsic aids for interpreting the provisions of the Act. In some cases, the legislative debates will be persuasive of a particular interpretation; in other cases, whether due to the language used, the overall context of those debates, the clarity of intention communicated, the specific legislation in issue, or the limitations on the excerpts in evidence, the debates may be less persuasive.

**[68]** The Board has carefully reviewed the second reading speech and the additional excerpts in evidence. The terms “double-breasting” and “spin-off” are at times used interchangeably. On occasion the former term is used in a broad sense (stating for example, “you cannot do both at the same time”), but it is repeatedly connected to the concern with spin-off companies (“what we have today is a number of companies which established their spinoffs prior to 1992, which are continuing to operate as union and non-union”). The excerpts reveal that the focus overall was on spin-offs and, in particular, those spin-offs that continued to be sanctioned by virtue of the temporal limitation of the legislation.

**[69]** Furthermore, it is necessary to consider the Hansard debates in the context of the specific amendments in issue. *The Construction Industry Labour Relations Amendment Act, 2000*, removed the temporal limitation to the Board’s discretion to make a common employer declaration, and removed the category of discretion in which the Board has found that the entities were sufficiently related to a unionized employer that, in the opinion of the Board, they should be treated as one and the same. The amendment also provided the Board with powers, specific to a proceeding brought pursuant to section 18 of the *CILRA*, over investigations, the provision of information, and the production of records. The Board now has similar, general powers, but those powers are contained in section 6-103.

**[70]** Otherwise, the provision was the same before the amendments as it is now.

**[71]** In interpreting section 6-79, the Board must also consider past decisions of the Board that interpreted this provision, or related provisions. In particular, the Union relies on *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v Cornerstone Contractors Ltd.*, 2015 CanLII 43777 (SK LRB) [*Cornerstone*]:

*[71] The mischief which these provisions interdict is “double breasting”, that is the establishment of a non-unionized related business which is then utilized to obtain work which would otherwise be available to the unionized employees. In those circumstances, the Legislature has directed this Board to issue a declaration which would include those non-union workers in the bargaining unit with the previously unionized workers to avoid erosion of the unionized bargaining rights and loss of work to the unionized workers.*

**[72]** The intention of the legislation was described in similar terms in *United Steel Workers Union, Local v Edgewood Forest Products Inc.*, 2013 CanLII 15714 (SK LRB) and *International Brotherhood of Electrical Workers, Local 529 v Merick Contractors Inc.*, 2015 CanLII 19981 (SK LRB) [*Merick*], at paragraph 129 (“a common employer is seeking to work in the same trade through two entities, one unionized and one not unionized”).

**[73]** In *North American*, at paragraph 60, double-breasting is described as “the transfer of work that would normally be completed by a unionized company to a non-union [related] company operated under common direction and control – a practice commonly known as ‘double breasting’” (emphasis added).

**[74]** While the Board in *Cornerstone* suggested that it has been “directed” to issue a declaration, it has also suggested that the provision was intended to “limit” the practice (*Merick*, citing *Graham Construction*, [1998] SLRBD No 58).

**[75]** In earlier case law, the Board provided greater detail about the historical background leading up to the original provisions and the focus of the concerns that the provisions were intended to address: *International Brotherhood of Electrical Workers, Local 529 v Saunders Electric Ltd.*, 2008 CanLII 47057 (SK LRB).<sup>2</sup>

**[76]** In *Re ATU, Local 588 and Regina (City) et al.*, [1999] Sask LRBR 238 [*Wayne Bus*], the Board discussed the purpose of section 37.3 of the Act:

*[124] One of the primary purposes of common employer legislation is to prevent the erosion or undermining of existing bargaining rights, as may occur, for example, when work*

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<sup>2</sup> Reconsidered for other reasons in *International Brotherhood of Electrical Workers, Local 529 v Saunders Electric Ltd.*, 2009 CanLII 63147 (SK LRB).



*is diverted from a unionized employer to an associated non-union entity. Historically, the most common example of this erosion has been the creation by unionized contractors of non-unionized "spin-offs" in the construction industry. In Saskatchewan The Construction Industry Labour Relations Act, 1992, c. C-29.11, contains specific provisions applicable to the construction industry; s. 37.3 of the Act applies to all other sectors.*

**[77]** Throughout the case law, the Board has guarded its discretion by carefully considering whether there is a compelling labour relations purpose before deciding whether it is appropriate to grant the order requested.

**[78]** The Union's argument suggests that section 6-79 is intended to prohibit the practice of double-breasting, and, to prohibit the practice of companies doing "both at the same time" (re operating union and non-union). In making this argument, the Union properly urges upon the Board a remedial interpretation of the provision, but casts its interpretation in terms that are too broad and too absolute for the Board to accept. *Wayne Bus* correctly identifies that spin-offs are historically the most common example of the erosion of bargaining rights, recognized by the legislation through the adoption of section 6-79 and predecessor provisions. Subsequent case law has suggested that the Board should adopt a remedial approach to the provision, taking into account its underlying purpose. However, section 6-79 should not be interpreted as a blanket prohibition against corporate groups operating with union and non-union subsidiaries.

**[79]** The focus of section 6-79 is to preserve existing bargaining rights. Section 6-79 is not intended to permit unions to acquire bargaining rights. Corporate entities may establish structures for legitimate purposes; it is also true that these structures may be used to mask the true employer and avoid existing bargaining rights. The question is whether those companies meet the test for a common employer declaration, and whether there is a compelling labour relations purpose for granting the declaration requested.

**[80]** The Union argues that the need to make a declaration is reinforced if the Board finds that there has been a diversion of work from a certified entity. It relies for this argument on *Brock Canada West Ltd. v International Association of Heat and Frost Insulators and Allied Workers, Local 118*, 2020 BCLRB 55 (CanLII) [*Brock*] at paragraph 33, citing *Ansan Industries Ltd. (Ansan Traffic Control)* and *Lanetec Traffic Control Inc.*, BCLRB No. B1/2011 at paragraph 81; and *United Brotherhood of Carpenters and Joiners of America, Local 2486 v MacIsaac Mining and Tunneling Co.*, 2000 CanLII 12308 (ON LRB) at paragraphs 41-44.

**[81]** The Union acknowledges that in common employer cases declarations have been refused due to the existence of conflicting representation rights, but states that this is not a factor in the current case. The Board agrees that conflicting representation rights are not an issue in this case.

**[82]** In *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union v Comfort Cabs Ltd*, 2015 CanLII 19986 (SK LRB) [*Comfort Cabs*]<sup>3</sup>, at paragraph 61, this Board identified four prerequisites for a common employer declaration, all of which were to be satisfied before the Board would grant the requested Order:

1. *The application must involve more than one corporation, partnership, individual or association and at least one of those entities must be a certified employer.*
2. *The subject entities must be “sufficiently related” to a unionized employer through their involvement in associated or related businesses, undertakings or other activities.*
3. *The subject entities must be operated under “common control and direction”.*
4. *The designation must serve a valid and sufficient labour relations purpose, interest or goal. ... In other words, there must be a compelling labour relations reason for making the declaration and the benefits of doing so must outweigh the mischief such declaration is likely to cause.*

**[83]** The Respondents also rely on the test as described by the Board in a recent decision, *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v Book Insulations Ltd.*, 2019 CanLII 98480 (SK LRB) [*Book Insulations*]. In that case, the Board observed that, pursuant to section 6-79, the question of whether the businesses, undertakings or other activities are “associated or related” does not explicitly call for a “sufficiency” analysis. Therefore, the second prerequisite, for the purposes of the current legislation, is that the businesses, undertakings or activities are to be associated or related.

**[84]** Once the Board has found that the first three requirements have been satisfied, it must then determine whether to exercise its discretion to declare that more than one corporation, etc. are one employer for purposes of Part VI. This discretion will be exercised where there is a valid and sufficient labour relations value, interest or goal contemplated by the Act in making the declaration and will not be exercised in the absence of such a purpose: *Wayne Bus* at para 146.

**[85]** The Board in *Wayne Bus* commented on the meaning that should be given to “associated” and “related” when applying the common employer test:

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<sup>3</sup> Upheld at *United Steel Workers v Comfort Cabs Ltd.*, 2016 SKQB 171; 2017 SKCA 45.

152 *The concept of “association” is predicated upon the organization or alliance of two or more individuals or entities out of a common interest or for a common purpose; their respective activities may be combined in a manner that results in an organization that is functionally independent of either “associate” alone.*

153 *The concept of “relation” connotes connection in a commercial sense. The connection need not be structural, as in the case of companies that have common directors, officers or shareholders, but may arise because of a significant degree of interdependence in the carrying on of an enterprise in which the parties to the relationship have a mutual or reciprocal interest.*

**[86]** The Board also observed, at paragraph 151, that “[t]he criteria used to determine whether activities are ‘associated or related’ and under ‘common control or direction’ cannot be totally isolated from one another. Many of the same indicia and characteristics bear upon both issues.”

**[87]** Finally, SOIC relies on the description of the following general principles, as per *Book Insulations*:

*[42] The Board must be careful not to unilaterally impose collective bargaining on a group of employees whose wishes have not been gauged through the statutory voting process. The common employer provisions are not to be used to extend or enhance, but rather preserve, bargaining rights: Wayne Bus, at paragraph 126.*

*[43] In this respect, the Board has cautioned against delay in bringing a common employer application, suggesting that, “the longer the delay and the greater the number of employees that could potentially be unilaterally swept in, the more likely a common employer declaration will do more labour relations harm than good”: North American Construction Group, cited in Comfort Cabs (SK LRB), at paragraph 65. ...*

*[44] In assessing a common employer application, the Board is focused on determining the true employer of the employees in question for labour relations purposes. In performing this assessment, the Board undertakes a functional assessment of the “actual seat of fundamental control or direction of the activities that determine employment and working conditions of the employees”:*

*The inquiry under each of ss. 2(g)(iii) and 37.3 of the Act is directed to determining the “true employer(s)” for labour relations purposes of the employees in question. A functional analysis to identify the actual seat of fundamental control or direction of the activities that determine employment and working conditions of the employees must be undertaken in both instances using similar criteria. The results of the exercise may identify more than one “common” employer exercising fundamental control or direction. A detailed examination of the relationship between the entities involved and their relationship to the work place must be undertaken using various criteria outlined below.  
Wayne Bus, at paragraph 128.*

*[45] In Wayne Bus, the Board cited the following summary of criteria used by the Ontario Board in Labourers’ International Union of North America, Local 183 v York Condominium Corporation, et al, [1977] OLRB Rep October 645 [“York Condominium”], in determining which parties are the true employers of certain employees:*

1. *The party exercising direction and control over the employees performing the work.*

2. *The party bearing the burden of remuneration.*
3. *The party imposing discipline.*
4. *The party hiring the employees.*
5. *The party with the authority to dismiss the employees.*
6. *The party who is perceived to be the employer by the employees.*
7. *The existence of an intention to create the relationship of employer and employees.*  
*Wayne Bus, at paragraph 129.*

[46] *The following factors, as outlined by the Ontario Labour Relations Board in Walters Lithographic Company Co. Ltd., [1971] OLRB Rep 406 ["Walters Lithographic"], and recited in York Condominium, are relevant in an assessment of whether the activities or businesses in question are carried on under common control or direction:*

1. *Common ownership or financial control;*
2. *Common management;*
3. *Interrelationship of operations;*
4. *Representation to the public as a single integrated enterprise; and*
5. *Centralized control of labour relations.*  
*As cited in Wayne Bus, at paragraph 153.[2]*

[88] Not one of the *Walters Lithographic* factors is dispositive of the issue, nor is the list of factors a set of mandatory preconditions for the exercise of the Board's discretion. Each case will be determined on its particular facts, and no two cases will be exactly alike. In one situation, a factor may be particularly influential, having shed light on the reality of the relationships involved. In another case, the same factor may be less revelatory and therefore less important.

[89] Next, the Board will apply the foregoing principles to the facts of the present case. First, however, it may be helpful to restate the corporate entities that have been put in issue through the Union's application. These are the unionized corporation, SOIC, and the Non-Union Respondents, SOI, SOII, Arc Line, Tartan, and Studon.

[90] The first prerequisite is relatively straightforward and easily satisfied. The application involves more than one entity and one of those entities is a certified employer [SOIC]. All of the Respondent entities are corporations. Therefore, this prerequisite is satisfied.

[91] The second prerequisite is that the businesses, undertakings or activities are associated or related. The Union has put in issue the relationship between SOIC and the Non-Union Respondents, which represent some but not all of the companies within the Stuart Olson family. The Stuart Olson group of companies, as a whole, is a large construction and industrial services enterprise. Due in part to its many subsidiaries and various areas of expertise, SOI, SOII and the named subsidiaries are able to serve a wide variety of clientele on a wide variety of projects.

**[92]** The Union relies on the information disclosed by the AIF, stating that the AIF is the most reliable evidence before the Board about the operations of SOI and its subsidiaries. To support this argument, the Union relies on *R v Aitkens*, 2020 ABPC 129 [*Aitkens*], at paragraph 147, in which the Court confirmed that the securities trading “system relies on transparent and accurate information to ensure an efficient and prosperous market.” The Union says that SOI is required pursuant to the *Securities Act*, RSA 2000, c S-4 [*Securities Act*] to file an AIF, and pursuant to that Act, no person or company shall make a statement that is misleading or untrue. The consequences of making misleading statements in an AIF are serious. One of the required disclosures in an AIF is a description of the intercorporate relationships.

**[93]** The AIF discloses that there are four segments of SOI’s operations, one of which is the Industrial Group. Within the Industrial Group are SOIC, Studon, Tartan, and Arc Line. The corporations included in the Industrial Group have similar characteristics and provide similar services, have similar production processes, similar customers, similar methods of service delivery, and regulatory environments. The integrated industrial service leads to new business by facilitating the pursuit of larger projects and bundled contracts. The Industrial Group is led by a Chief Operating Officer, Bob Myles [Myles]. Myles was at one time the director of each of SOIC, SOII, and Tartan. Myles is listed as one of the key personnel for SOII.

**[94]** The Industrial Group is divided into two divisions, including a Construction Division and a Maintenance, Repairs and Operation [MRO] Division. SOIC and Arc Line are contained in the Construction Division, whereas Studon and Tartan are included in the MRO division. According to the AIF, the MRO Division has been in business for over 50 years. Most of its client engagements involve multi-year contracts. It serves the resource and industrial sectors. The Construction Division began operations in 2011.

**[95]** There is also a significant degree of interdependence in the carrying on of the overall enterprise, and, as is discussed in more detail in relation to the third prerequisite, there are common directors and officers across the various corporations.

**[96]** Although an AIF has to be considered in context, the evidence is sufficient to show that Studon is related to SOI and SOII, and that SOIC is related to SOI, SOII, and Arc Line. It is also sufficient to demonstrate that SOIC is related to Studon, despite the different divisions within which they operate. Both Studon and SOIC are electrical contractors. Each of these relationships show a significant degree of interdependence in the carrying on of an enterprise in which the companies have a mutual interest. As Tartan has been largely inactive since its acquisition, the

Board does not consider it to be operating interdependently in the same manner as the other corporations.

**[97]** Next, the Board will consider the third prerequisite. The third prerequisite is that the associated or related businesses (or undertakings or other activities) are carried on under common control or direction by or through the entities in question, which are the Respondent corporations, all of which belong to the Stuart group of companies. In considering this prerequisite, the Board will consider each of the *Walters Lithographic* factors, in turn.

**[98]** The first factor is whether there is common ownership or financial control.

**[99]** SOI is the corporate parent for each of the Respondent entities. Each Respondent is listed as a principal operating subsidiary. According to the AIF, SOI “beneficially owns, controls and directs, directly or indirectly, 100% of the votes attaching to all voting securities” of each of the principal operating subsidiaries. The directors and common officers of the corporation beneficially own or exercise control or direction over approximately 1.56% of the issued and outstanding common shares.

**[100]** The Union relies on a common office located in Calgary, Alberta. This is the address of the primary attorney for SOIC, which is also the registered address for SOI (2019) and SOII, Tartan, and Arc Line. As of December 9, 2020, the registered address for SOI had changed but remained within Calgary. There are other addresses in Calgary and in Saskatoon, Edmonton, and Sudbury.

**[101]** The Stuart Olson website lists an industrial contact at an address in Saskatoon - Mike Waller, the Vice President of Business Development for SOII. The CEO or COO (operating), Industrial Group, is Myles, who is also one of the key personnel for SOII. Nonetheless, there is no reference in the AIF to a Saskatoon address in relation to the Industrial Group. The AIF lists the MRO division (but not the Construction Division) as having an office in Regina.

**[102]** SOIC’s home jurisdiction, according to the corporate registry profile reports dated October 1, 2020 and June 5, 2019, is Ontario. Gary Schnase [Schnase], who is currently listed as both a director and an officer of SOIC, appears to reside in Sudbury. In SOIC’s response to the request for particulars, Schnase is listed as the Senior Vice President of SOIC at the material times. Based on the corporate registry profiles, Schnase is not associated with any of the other corporations. His name does not appear in the AIF.

**[103]** Schnase appears to be a relatively recent addition to the role. In the corporate registry profile report, dated June 5, 2019, he is not listed as a director or officer, and all of the listed directors and officers are located in Calgary. However, the AIF, which is dated March 5, 2019 for the financial year ending December 31, 2018, lists Sudbury as the headquarters for SOIC. The year of incorporation in its home jurisdiction is 2011.

**[104]** The Union relies on the presence of four common directors, being Richard Stone [Stone], Myles, Bill Pohl [Pohl], and Richard McLellan. Stone is the Vice President, General Counsel and Corporate Secretary and a Director of SOII, SOIC, Studon, Tartan, and Arc Line. Myles is Chief Officer of the Industrial Group and a Director of SOII, SOIC, and Tartan. Pohl is the Vice President Finance Operations of Stuart Olson Inc. and a Director of SOIC and SOII. McLellan is a Director of Studon.

**[105]** In summary, the corporate structure is complex but it is apparent that there is significant overlap and common ownership among the various Respondents, including SOIC.

**[106]** The second factor is whether there is common management; the third factor is whether there is an interrelationship of operations. These factors are sufficiently related to be considered together.

**[107]** Across the board, all of the key personnel for each of the Respondents are different people. Some of the personnel are directors in common for the various Respondents. Stone, Myles, and Pohl hold high level management or executive roles. Only Studon lists just one key person.

**[108]** SOIC has three of its own key personnel. At the material times, Schnase was SOIC's Senior Vice President, Nicholas Carrier was the General Manager, and Jessie Plummer was the Finance Manager. There is no evidence that any of these individuals are directly involved in any of the other corporations.

**[109]** The Non-Union Respondents, in their response to the request for particulars, state that "[n]one of Stuart Olson Inc., Stuart Olson Industrial Inc., Arc Line Construction Ltd., Tartan Canada Corporation, or Studon Industrial Inc. reports to any of the other respondents in this application". SOIC's response states that it "operates independently of the other companies, but does receive certain management services from Stuart Olson Industrial Inc.(SOII)."

**[110]** The AIF references a “Corporate and other” group which includes the functions of accounting, treasury, human resources, marketing, information technology services, corporate development, legal, insurance, risk, internal audit, payroll, among others. SOI (or, possibly SOII) provides some assistance in the areas of preparing bids for work and recruiting and hiring employees in Saskatchewan.

**[111]** Certificates of insurance apply to Stuart Olson Inc. and all subsidiaries. Individual entities also obtain project-specific insurance policies, depending on the size of the projects. The Respondent subsidiaries did not have individual project insurance policies for Saskatchewan from 2015 to 2020. SOIC admits that it does not hold any insurance separate from SOI. There are common Terms of Reference for the Health, Safety & Environment Committee (SOI) and there is a common Employee HSE Handbook (SOII) for the Industrial Group. The handbook includes detailed information about fitness to work, safety, environmental management, housekeeping, and other employee expectations.

**[112]** The Union suggests that Kassam is employed by SOI at the Sudbury office and that his direct role in labour relations is unexplained given the Respondents’ position that SOI does not directly hire tradespeople and was not directly involved in the Western Potash project. It does appear that Kassam was involved in some aspects of hiring/firing. However, in our view, the LinkedIn profiles are not very reliable. Even if the Board were to rely on Kassam’s LinkedIn profile, it would have to be considered in context. LinkedIn is used as a career building networking platform. As with much of social media, users include information on their profile to advertise their experience. The fact that Kassam would list SOI is consistent with the evidence showing the benefit to the subsidiaries of SOI’s name recognition and reputation.

**[113]** The Union has suggested that its case would have benefited from *viva voce* testimony on behalf of the Respondents. This might be true, but it is also true that the Respondents’ replies to the Union’s requests for particulars were put in evidence. In response to those requests, it appears that Kassam is not employed by any of the Non-Union Respondents. There is no similar response from SOIC, however, the Union has not suggested that SOIC failed or refused to respond to a similar request. There is no evidence about Kassam’s relationship with Prairie Construction. Although Kassam’s exact status is unclear, what is clear is that he had a working association with one or more of the Stuart Olson companies, and that he was the project manager on the Western Potash project. It is likely that he was working for Prairie Construction.



**[114]** The Union also relies on its own characterization of the evidence, being that Keaton left the Western Potash site to work for SOIC in Manitoba. This is not the evidence before the Board – and is certainly not clear or cogent evidence before the Board. Sandham testified that Keaton was working on a project in Manitoba but Sandham assumed Keaton was working for the unionized contractor of Stuart Olson, and could not confirm. To the extent that Sandham suggested indirectly that Keaton was working for SOIC, this evidence was completely speculative and entirely unreliable.

**[115]** For the Western Potash project, employees were hired through job postings, online portals, or through personal acquaintances. Although there were union members employed on the Western Potash project, there is no evidence of employees being transferred between SOIC and Studon, or SOIC and Prairie Construction.

**[116]** The Non-Unionized Respondents' response to the Union's production request acknowledges that Arc Line provided support for potash mine construction at "Stuart Olson Prairie Construction I" in 2019. While it is possible that Arc Line had some involvement in hiring for this project, any evidence that it hired electrical workers is extremely limited.

**[117]** In summary, the evidence certainly suggests a degree of interrelationship between the various subsidiaries. There is evidence of centralized administrative functions. However, there is no evidence of any of the Respondents providing work or labour to any of the other Respondents. Furthermore, it appears that SOIC is under separate management.

**[118]** The next issue is the representation to the public as a single integrated enterprise. There is a significant amount of common branding among the Respondents, as demonstrated by the common use of the seemingly generic brand "Stuart Olson". The subsidiaries and the parent company benefit from the use of this corporate brand. Studon's marketing materials state that "Stuart Olson gives Studon the capability to supply additional complementary services and provide turnkey solutions under a single contract." The testimony of employees suggests that employees will often believe and represent that they are working for "Stuart Olson". They identify first with Stuart Olson, and second with the subsidiary managing the project in question.

**[119]** However, while the subsidiaries are represented as a related enterprise, they are not necessarily represented as a single enterprise. The subsidiaries have related but separate experience, expertise, and specializations. Many of the subsidiaries were longstanding and well-established companies before they were acquired by SOI. Most of the marketing materials in

evidence suggest that while common branding is used, the subsidiaries' branding is often used alongside, especially on outward facing documents. This suggests that there is intrinsic value associated with the brands that have been developed by or through the subsidiaries, particularly for owners, sub-contractors, and even the public.

**[120]** The next factor is whether there is centralized control of labour relations. SOI provides some assistance in recruiting and hiring employees in Saskatchewan to the other entities. The human resources contact for the Western Potash project worked for SOI. Health, safety, and environment policies are created for common use. On the other hand, the paystubs list Studon as the employer for the payroll account for the Western Potash project.

**[121]** The Union relies on job postings for electrical workers that list Studon as the employer but that connect to a Stuart Olson website or portal; on a job posting for a site administrator for SOI in Esterhazy, implying that the timesheet processing and payroll reconciliation for the Western Potash project was performed by SOI; and on a job posting for an Estimator. Sweet's evidence is that he retrieved these job postings at around the time of the project and at that time, was unaware of other, relevant industrial work in the area. This evidence is circumstantial and not particularly reliable; nonetheless, the Union suggests that it raises questions which remain unanswered by the parties who are in possession of those answers.

**[122]** However, Prairie Construction is not a party to this proceeding. Therefore, the evidence with respect to its involvement has been limited. This is true with respect to both the second and third prerequisites.

**[123]** To be sure, the corporate registry documents are sufficiently clear that Prairie Construction is operating within the Stuart Olson group of companies. Prairie Construction's involvement with the Western Potash project suggests that it was working in concert with other non-unionized entities that are related to SOI and SOII. On this basis, it seems that Prairie Construction is related to SOI and SOII. There is also, perhaps, the minimum necessary evidence to demonstrate that Prairie Construction is related to SOIC through these intercorporate relationships.

**[124]** However, Prairie Construction does not appear in the AIF, or in the published corporate structure. There is no evidence of Prairie Construction's operations. Without further evidence, it is not possible to draw conclusions about the allocation of work, including whether work was diverted from SOIC to Prairie Construction, or more precisely, from SOIC to Studon by Prairie Construction. The extent of direction and control between Prairie Construction and the

Respondents remains unclear. This is a crucial link for determining whether there is the requisite direction or control for purposes of the common employer declaration.

**[125]** The Union argues that the Respondents' failure to call evidence is a mark against them. In *International Brotherhood of Electrical Workers, Local 424 v Chemco Electrical Contractors Ltd.*, 2019 CanLII 55689 (AB LRB) [*Chemco*] at paragraphs 64-9, the Alberta Board concluded that the failure to call evidence to explain why a non-unionized company was chosen over a unionized company justified an adverse inference:

*[69] Based on the findings made earlier in this decision, Briand Halina has significant control over Chemco Engineering, CCL and CEC. Chemco Engineering did not operate at arm's length with CCL in granting it the Heartland work. There is no evidence to indicate why CCL was chosen over CEC. We draw an adverse inference based on the respondents' failure to call anyone to explain why that decision was made. We conclude the work at Heartland was directed to CCL rather than CEC in order to avoid CEC's bargaining relationship with the IBEW. This finding makes a common employer declaration mandatory under section 192(2) of the Code.*

**[126]** Along similar lines, the Union also relies on *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v AlumaSafway*, 2019 CanLII 120651 (SK LRB) and *International Brotherhood Of Boilermakers v Edmonton Exchanger & Refinery Services Ltd.*, 2020 CanLII 85158 (SK LRB) [*Boilermakers*]. In *Boilermakers*, it was found:

*[60] The NMC chose not to provide any evidence, stating in argument that the IBB had entered the evidence necessary for the determination of this matter. The Board disagrees. The interpretation of many of the NMC's documents is at the core of this matter. The Board received evidence supporting the IBB's interpretation, but no evidence supporting the alternative interpretation that the NMC is urging in its argument. The Board agrees with the IBB's argument that this absence of evidence must be interpreted against the NMC. In particular, no alternative explanation or interpretation of the November 6, 2013 notes, the November 27, 2018 minutes or the NMA's title page and Appendix C was offered by the NMC, and these are its documents. The Board therefore draws an adverse inference against the NMC and presumes its evidence would not have supported its arguments.*

**[127]** In *UFCW, Local 1400 v Wal-Mart Canada Corp.*, 2008 CanLII 64399 (SK LRB) [*Wal-Mart*], the Board made the following findings with respect to an allegation raised by counsel:

*[211] First of all, we find that there is no evidence to support the allegation. The basis for the allegation was allegations made in the unfair labour practice application filed on behalf of Michael Siourounis, LRB File No. 129-04, and the reply thereto filed by the Union. No evidence at all was adduced, or argument presented, in relation to Mr. Siourounis' application, Mr. Nolin having withdrawn as counsel on November 22, 2005, and [the] applicant did not appear before the Board on his own behalf. On the motion of counsel for the Union, the application in LRB File No. 129-04 was dismissed for want of evidence.*

[212] Furthermore, the Employer did not call Mr. Siourounis to testify nor was any other evidence adduced with respect to the issue. No explanation was given for this failure. Employer's counsel did not cross-examine any witness(es) with respect to same.

[213] Accordingly, we find there is no sufficient evidence to support the allegation.

[128] The Union relies on this latter passage for the proposition that the Board does not generally treat the contents of an application or reply as substantive evidence where the party seeking to rely upon it does not adduce a basis for believing it. The Board does not agree that the *Wal-Mart* passage can be interpreted in such a broad fashion.

[129] For their part, the Respondents rely on the particulars and documents provided to the Union pursuant to its requests and entered into evidence in this proceeding, as well as on their respective replies to the application. They state that the Union asks the Board to pick and choose evidence that supports the Union's position; instead of doing this, the Board should interpret the evidence in a way that is consistent. The fact is, silence cannot establish a *prima facie* case where none exists. SOIC also relies on *North American*, in which the respondents relied on their replies and agreed to produce the declarants for purposes of cross examination by the Union. There has been no similar request in this case.

[130] With respect to the replies, the Board has the following comments. First, the replies filed in these proceedings contain a concise statement of the material facts which are intended to be relied upon. The submissions within the replies are, in so far as they are matters of fact, declared to be true to the best of the declarant's information, knowledge and belief, and, in so far as they are matters of opinion, are reasonably and honestly believed by the declarant. In this case, the declarants are individuals who would normally be in possession of the facts that are outlined in those replies. The replies meet the threshold of reliability to be considered as evidence in these proceedings.

[131] However, the weight to be given to the replies is another matter. The declarants did not testify, and their comments were not subject to cross-examination. Although there is no property in witnesses, evidence about the companies' internal operations is within the companies' possession and control. Subpoenaing a witness to testify on behalf of an adverse party is not necessarily realistic, especially if the evidence is to be presented in an examination-in-chief. Applying for, or requesting, the cross examination of a declarant or affiant is in many cases going to be limited by the contents of the reply in question. Therefore, if the applicant raises a *prima facie* case, it is for the Respondent to decide whether to call evidence to refute that case, and to

then do so. Depending on the circumstances, it may not be sufficient to suggest that the applicant had an opportunity to cross examine on content of the replies.

**[132]** Other issues going to weight might include, but are not restricted to: the extent to which the facts are set out in detail or constitute broad statements without qualification or detail, and, the existence of other evidence that confirms or refutes the statements contained in the pleadings. Where the Board has relied on the replies in this case, it has done so carefully, while assigning the appropriate weight to the statements made therein.

**[133]** But, in this case, the question is whether anything has gone unanswered to which the Respondents would be expected to reply in a manner other than through the replies and the responses to the Union's requests. The Board thinks not. It was no secret that Prairie Construction was made the contractor for the Western Potash project. The Respondents appear to have been cooperative with requests for particulars and documents. Extensive documents were entered into evidence. Prairie Construction could have been put on notice that it was expected to respond to allegations, but it was not. This is not a case like *Chemco*, where one person had significant control over all three entities, and therefore the availability of an adverse inference for failure to call evidence was clear. There were no questions about Prairie Construction contained in the requests for particulars. For all of these reasons, this is not an appropriate case for an adverse inference.

**[134]** Even apart from Prairie Construction's absence, this is not a strong case for direction or control, in particular with respect to SOIC. To be sure, the Board has found some indicia of direction and control among the Respondents, SOI, SOII, Studon, Arc Line, and SOIC (common directors and owners, centralized administrative functions, and common branding). However, the subsidiaries are long-standing companies with established reputations, the subsidiaries perform services in particular areas of specialty and focus in particular jurisdictions, there is some evidence of independent management especially within SOIC, and there is no evidence of transfer of employees in relation to the Western Potash project.

**[135]** Finally, it is not necessary to address the question of labour relations purpose unless the other factors have been established. The Board will not exercise its discretion in the absence of a compelling labour relations purpose. Therefore, given our foregoing determinations, the Board will address this issue only briefly.

**[136]** First, the Union believes that the group of companies has organized its business to avoid its bargaining obligations and asks the Board to consider the evidence of hostility to organizing in support of this argument. Specifically, the Union points to the evidence that Kobak was organizing at the time of his termination. This explains why it was not available to the Union to bring a certification application.

**[137]** It is not necessary for a union to demonstrate a previous failed attempt to certify in order to justify a common employer declaration. But more to the point, the evidence of organizing is very weak. Any organizing on the ground occurred through Kobak. Kobak testified that his organizing attempts consisted of a few conversations with a couple of people. It is unclear when exactly he had these conversations and what temporal connection, or any connection, there was to the termination itself. Although it is open to the Board, and it should consider, circumstantial evidence of anti-union terminations, the evidence here is not just circumstantial - it is unsatisfactory.

**[138]** Second, the Board agrees with the Respondents that there is no persuasive evidence of a compelling labour relations purpose. The Non-Union Respondents all have had longstanding histories operating non-union prior to the Union's acquisition of bargaining rights for SOIC. The related businesses predated the existence of bargaining rights. The work in issue was performed by a long-standing non-union electrical contractor. There is no evidence linking SOIC to the Western Potash project. There is no apparent diversion of work. SOIC continues to bid jobs in Saskatchewan.

**[139]** For these Reasons, the application pursuant to section 6-79 is dismissed.

**[140]** This is a unanimous decision of the Board.

**DATED** at Regina, Saskatchewan, this **2<sup>nd</sup>** day of **June, 2021**.

**LABOUR RELATIONS BOARD**

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Barbara Mysko  
Vice-Chairperson